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Attorneys for Plaintiff and Real Party in Interest

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

INTERNATIONAL CHURCH OF THE
FOURSQUARE GOSPEL,
Plaintiff,
v.
CITY OF SAN LEANDRO,TONY SANTOS
(in his official capacity), SURLENE G.
GRANT (in her official capacity), DIANA M.
SOUZA (in her official capacity), JOYCE R.
STAROSCIACK (in her official capacity),
BILL STEPHENS (in his official capacity),
JIM PROLA in his official capacity), JOHN
JERMANIS (in his official and individual
capacities), DEBBIE POLLART (in her official)
and individual capacities), DOES 1-50,
Defendants.

) Case No.:
)
) **COMPLAINT FOR VIOLATION OF**
) **CONSTITUTIONAL RIGHTS AND THE**
) **RELIGIOUS LAND USE AND**
) **INSTITUTIONALIZED PERSONS ACT**
) **[42 U.S.C. 1983; 42 U.S.C. 2000cc]**

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) [Demand for Jury Trial]
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1 FAITH FELLOWSHIP FOURSQUARE)
2 CHURCH,)
3)
4 Real Party in Interest.)
5

INTRODUCTION

6 1. This action is brought to enforce the Religious Land Use and Institutionalized
7 Persons Act of 2000 (“RLUIPA”), 42 U.S.C. § 2000cc, and for violation of constitutional rights
8 under 42 U.S.C. § 1983. The Plaintiff and Real Party in Interest seek equitable relief and
9 damages.

JURISDICTION AND VENUE

10 2. This Court has jurisdiction over this action under 28 U.S.C. § 1331, and 1343(3)
11 (4) and 42 U.S.C. § 2000cc, *et seq.*, which confer original jurisdiction on federal district courts in
12 suits to reduce the deprivation of rights, privileges and immunities secured by the United States
13 Constitution and federal law, particularly the First Amendment to the United States Constitution,
14 and specifically the Religious Land Use and Institutionalized Persons Act of 2000.

15 3. This action is authorized in part by 42 U.S.C. § 1983 because the Defendants are
16 state actors who have abridged the constitutional rights of the Plaintiff and Real Party in Interest.

17 4. The Court has jurisdiction over the request for declaratory relief pursuant to 28
18 U.S.C. §§ 2201 and 2202 and FRCP 57, and includes a request for a speedy decision and an
19 advance on this Court’s calendar under 28 U.S.C. 2201 and FRCP 57.

20 5. Venue is proper under 28 U.S.C. § 1331(b), because the acts giving rise to the
21 claims alleged herein has occurred, and continues to occur, in the Northern District of California.

PARTIES**Plaintiff**

6. Plaintiff, International Church of the Foursquare Gospel (“ICFG”), holds title to
 4 property, which is the subject of the dispute, as more fully described herein. ICFG is a Christian
 5 denomination with an episcopal polity.

Real Party in Interest

7. All times herein mentioned real party in interest, FAITH FELLOWSHIP
 8 FOURSQUARE CHURCH, (hereinafter called “the CHURCH”), was, and is, “a religious
 9 assembly or institution” for the purposes of RLUIPA (42 U.S.C. § 2200cc et seq.). CHURCH is
 10 associated with ICFG. The CHURCH’s interest in the property which is the subject of this
 11 litigation is as follows: (1) it pays the mortgage; (2) submits applications to local governments for
 12 development and use of the property; (3) plans, executes and pays for the development of the
 13 property; and, (4) occupies and uses the property for its religious activities.
 14

Defendants

17. Defendant, CITY OF SAN LEANDRO, (hereinafter called “the CITY”), was and
 18 now is, a government for the purposes of RLUIPA (42 U.S.C § 2200 et seq.) and a municipal
 19 corporation, created under the authority of, organized and existing under, the laws of the State of
 20 California, and situated in the County of Alameda, and is empowered to act through its governing
 21 body, its officials, employees and official bodies. Plaintiff is informed and believes and thereon
 22 alleges that the CITY is a recipient of federal funds. At all times described herein, the CITY acted
 23 in a manner ultra-vires to the law and under color of state law, giving rise to the claims of ICFG
 24 and CHURCH, as more fully set forth herein.
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1 9. Defendant TONY SANTOS was, and is, a member of the City Council for
2 Defendant CITY and is also the Mayor of City and is sued in his official capacity. At all times
3 described herein, Mr. SANTOS acted in a manner ultra-vires to the law and under color of state
4 law, giving rise to the claims of ICFG and CHURCH, as more fully set forth herein.

5 10. Defendant SURLENE G. GRANT was, and is, a member of the City Council for
6 Defendant CITY and is sued in her official capacity. At all times described herein, Ms. GRANT
7 acted in a manner ultra-vires to the law and under color of state law, giving rise to the claims of
8 ICFG and CHURCH, as more fully set forth herein.

10 11. Defendant DIANA M. SOUZA was, and is, a member of the City Council for
11 Defendant CITY and is sued in her official capacity. At all times described herein, Ms. SOUZA
12 acted in a manner ultra-vires to the law and under color of state law, giving rise to the claims of
13 ICFG and CHURCH, as more fully set forth herein.

14 12. Defendant JOYCE R. STAROSCIACK was, and is, a member of the City Council
15 for Defendant CITY and is sued in her official capacity. At all times described herein, Ms.
16 STAROSCIACK acted in a manner ultra-vires to the law and under color of state law, giving rise
17 to the claims of ICFG and CHURCH, as more fully set forth herein.

19 13. Defendant BILL STEPHENS was, and is, a member of the City Council for
20 Defendant CITY and is sued in his official capacity. At all times described herein, Mr.
21 STEPHENS acted in a manner ultra-vires to the law and under color of state law, giving rise to the
22 claims of ICFG and CHURCH, as more fully set forth herein.

24 14. Defendant JIM PROLA was, and is, a member of the City Council for Defendant
25 CITY and is sued in his official capacity. At all times described herein, Mr. PROLA acted in a
26 manner ultra-vires to the law and under color of state law, giving rise to the claims of the ICFG

and CHURCH, as more fully set forth herein.

15. Defendant JOHN JERMANIS, (hereinafter called "Mr. JERMANIS" or "the City Manager"), was, and is, the City Manager for Defendant CITY. At all times described herein, Mr. JERMANIS acted in a manner ultra-vires to the law and under color of state law, giving rise to the claims of ICFG and CHURCH, as more fully set forth herein. He is sued in his official and individual capacities.

16. Defendant DEBBIE POLLART, (hereinafter called “Ms. POLLART” or “the Planning Manager”), was, during the time described herein, the Planning Manager for Defendant CITY. At all times described herein, Ms. POLLART acted in a manner ultra-vires to the law and under color of state law, giving rise to the claims of ICFG and CHURCH, as more fully set forth herein. She is sued in her official and individual capacities.

17. ICFG and the CHURCH is ignorant of the true names and capacities, whether individual, corporate, associate, or otherwise, of DOES 1 through 50, inclusive. ICFG and the CHURCH is informed and believes and thereon alleges that each of the fictitiously named Defendants is in some way responsible for or participated in or contributed to the matters and things complained of herein, and is legally responsible in some manner therefore. ICFG and the CHURCH will seek leave to amend this Complaint when the true names, capacities, participation, and responsibilities have been ascertained.

STATEMENT OF FACTS

18. The CITY—including but not limited to the City Council, Mayor, Planning Commission, Board of Zoning Adjustments, City Manager, Development Services Department (formerly the Community Development Department), and Engineering and Transportation Department—has the authority to regulate and restrict the use of land and structures within its

1 borders, including establishing Assembly Overlay to the Zoning Plan.

2 19. The CHURCH was founded in 1947. Its members have sincerely held beliefs that
3 Jesus Christ commands them to proclaim the Gospel, make disciples, and aid the poor. They
4 practice their beliefs by providing opportunities for worship, religious instruction and activities for
5 people of all ages. They also perform charitable services for the underprivileged.

6 20. By January, 2006, the CHURCH had outgrown its present facilities at 577 Manor
7 Boulevard (hereinafter “MANOR”), where three Sunday morning worship services were held for
8 nearly 1,700 people. Parking overflowed, overwhelming surrounding residential streets to the
9 detriment of all concerned. Because its kitchen was too small to prepare meals for countless poor,
10 the church had to curtail its charitable efforts. These conditions persist today.

12 21. Thus, the CHURCH began a diligent search for suitable property to accommodate
13 its growth. In February, 2006, the CHURCH found ideal property on 14600 and 14850 Catalina
14 Street (hereinafter “CATALINA”), comprising 3.56 acres and 188 parking spaces, with
15 convenient access to arterial streets in every direction. The property was zoned Industrial Park.

17 22. One month later, CHURCH representatives met with CITY officials, to discuss use
18 of the property for church activities. Representing the CITY, Development Director Hanson Hom;
19 Planning Manager Ms. POLLART; and Business Development Director Luke Simms assured the
20 CHURCH that while zoning for industrial districts precluded an assembly use for church
21 activities, several assembly uses for commercial recreation and entertainment in Industrial Limited
22 zones were allowed via a Conditional Use Permit. CITY officials advised the CHURCH to apply
23 for rezoning of the CATALINA property from Industrial Park (IP) to Industrial Limited (IL). But
24 unbeknownst to the CHURCH, churches were *only* permitted in Residential zones. Because the
25 IP zone already permitted entertainment activities and commercial recreation as conditional uses,
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1 CITY Officials had directed the CHURCH to proceed with an irrelevant rezoning application.

2 Relying on misinformation from CITY Officials, the CHURCH embarked on a fruitless fourteen-
3 month “wild goose chase.”

4 23. On March 24, 2006 the CHURCH signed a purchase and sales agreement and paid
5 \$50,000, half of a nonrefundable fee applicable to the purchase price of \$5,375,000, giving them
6 eight days to decide whether to complete the purchase of the CATALINA property. Then, on or
7 about March 31, 2006, the CHURCH paid the second half of the nonrefundable fee in the amount
8 of \$50,000.

10 24. On March 30, 2006, the CHURCH’s Council approved the purchase of the
11 CATALINA property. Ten days later, CHURCH members concurred. By December 7, 2006, the
12 CHURCH’s denomination—Plaintiff, International Church of the Foursquare Gospel—also
13 assented.

14 25. On May 11, 2006, following the direction of CITY officials, the CHURCH filed a
15 Planning Permit Application for a Zoning Map Amendment on the CATALINA property from
16 Industrial Park to Industrial Limited to allow a subsequent application for a Conditional Use
17 Permit for an assembly use (a true and correct copy of the Planning Permit Application is attached
18 as Exhibit A §a(1)). That same day, the CHURCH signed an amendment to their purchase and
19 sales agreement and paid an additional \$50,000 nonrefundable fee, applicable to the purchase
20 price, to extend the agreement until July 6, 2006. The third extension of escrow, with a total non-
21 refundable deposit of \$150,000, was up December 31, 2006. The CHURCH informed CITY
22 officials of this fee on or about September, 2006.

25 29. On May 18, 2006, the then owner of the CATALINA property completed its
26 portion of the Planning Permit Application for a Zoning Map Amendment. On the same day the
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1 CHURCH signed an Agreement for Payment of Fees for Application Processing and made a
2 \$2,000 deposit (a true and correct copy is attached as Exhibit A §a(2)).

3 30. On June 8, 2006, the City Council Business Development Committee met and
4 discussed the CHURCH's application to use the CATALINA property. The Committee made up
5 of then Mayor Young and City Council members Stephens and Badger expressed concerns over
6 the policy implications of allowing an assembly use in an industrial zone. This was stated in
7 apparent unawareness that under the municipal code assembly uses, such as, commercial
8 recreation and entertainment activities, are allowed in industrial districts.

9 31. On June 29, 2006, the CITY acknowledged receipt of the CHURCH's application.

10 32. On July 11, 2006, the CHURCH signed an amendment to their purchase and sales
11 agreement on the CATALINA property and paid an additional \$50,000 nonrefundable fee,
12 applicable to the purchase price, to extend the agreement until October 31, 2006. The CHURCH
13 informed CITY officials of this fee on or about October, 2006.

14 33. In July, 2006, the Planning Commission postponed discussion of the CHURCH's
15 zoning code amendment application, due to lack of information from the Planning Department.

16 34. In August, 2006, the Planning Commission held no meetings and conducted no
17 business.

18 35. In September, 2006, the Planning Commission again postponed discussion of the
19 CHURCH's zoning code amendment application.

20 36. The discussion was postponed due to lack of information from the Planning
21 Department.

22 37. On October 10, 2006, Faith Fellowship members addressed the San Leandro City
23 Council during the Public Comment portion of the meeting. The CHURCH's Senior Pastor, Gary

1 Mortara, Associate Pastor, David Silvey, realtor, Ed Bullok, and Sam Maliniak, an engineer with
2 San Jose Construction Company, with 300 church members in attendance, spoke about the
3 proposed purchase of the CATALINA property and the burdensome delays that the Defendants
4 had caused in the review process.

5 38. On October 12, 2006, the City Council's Business Development Committee met
6 and discussed the CHURCH's zoning amendment application. The CHURCH's Senior Pastor,
7 Gary Mortara, and Projects Coordinator, Jim Lee, attended the meeting. The Committee, made up
8 of then Mayor Young and then City Council members Badger and Stephens, expressed concerns
10 over the loss of tax revenue derived from industrial land that would result from permitting such a
11 religious assembly use and decided that more research was needed.

12 39. On October 19, 2006, the Board of Zoning Adjustments and the Planning
13 Commission held a joint work session, at which time the CHURCH's application was discussed.
14 It was decided that, rather than amend the Zoning Code to allow assembly uses as conditionally
15 permitted in Industrial Park zones, the CITY would apply an assembly use overlay to identified
16 areas in which assembly uses would be permitted. The Planning Staff was directed to develop a
17 specific proposal for an Assembly Use Overlay District. The CHURCH's Senior Pastor, Gary
18 Mortara, attended the meeting and told of the purchase and sales agreement, the substantial
19 investment already paid in escrow, and about how the CHURCH had been seeking approval from
20 the CITY for six months (since March of that year). He reported that the Board of Zoning
21 Adjustments and the Planning Commission members were very anxious to help the CHURCH that
22 night when they heard how long the CHURCH had been waiting. But when the members asked
23 what they could do to help, Ms. POLLART said there was nothing they could do, they could only
24 make a recommendation.

1 40. On October 23, 2006, the CHURCH signed an amendment to their purchase and
2 sales agreement on the CATALINA property and paid an additional \$50,000 nonrefundable fee,
3 applicable to the purchase price, to extend the agreement until December 31, 2006.

4 41. On November 1, 2006, an attorney for the CHURCH, Kevin Snider, sent a letter to
5 the Planning Commission outlining the CHURCH's need for a new meeting place and the reasons
6 why denial of the CHURCH's application would be a violation of RLUIPA.
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8 42. On December 7, 2006, the Board of Zoning Adjustment met and reviewed the
9 refined proposal for an Assembly Use Overlay. CHURCH representatives attended the meeting.
10 The Board took no action, citing lack of information. However, the Board raised concerns over
11 the loss of taxes should the CHURCH use the property.

12 43. On December 29, 2006, the CHURCH closed escrow on the CATALINA property.
13 The CHURCH could not extend the purchase deadline any longer, because the note on the
14 CATALINA property had come due and the then owner was forced to either refinance or sell it.
15 To close escrow they put down a final down payment of \$53,903.39. The Church believed there
16 was a good chance for approval based in part on the statements of CITY officials that other
17 amendments for assembly uses by commercial recreation and entertainment businesses had been
18 previously approved, on supportive representations made by CITY officials at public meetings,
19 especially the October 19, 2006, meeting of the joint session with the Board of Zoning
20 Adjustments and the Planning Commission, and, as suggested by Defendant Jermanis, the Church
21 had secured written support from virtually all neighboring businesses on Catalina Court (Exhibit
22 A. §o(3), Attachment 6).

23 44. On January 2, 2007, the deed of trust for the CATALINA property in the legal
24 name of the CHURCH and ICFG was recorded in the Alameda County Recorder's office.
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1 45. On January 17, 2007, the Redevelopment Advisory Committee recommended that
2 properties occupied by religious assembly uses be returned to a taxable use once the property is
3 vacated.

4 46. On February 22, 2007, the Planning Commission recommended approval of the
5 proposed Assembly Use Overlay District and Map amendments, which did not include the
6 CATALINA property (a true and correct copy is attached as Exhibit A. §j(1)(2)(3)). The few
7 parcels rezoned to the AU Overlay District of adequate size for a congregation of 1500 persons
8 (3.5 acres) were generally located between two railroad tracks near heavier industry, lacking in
9 infrastructure, and adjacent to old strip commercial blight or residential development.

11 47. On March 19, 2007, the City Council approved the Assembly Use Overlay District
12 and Map Amendments effective on May 1, 2007, creating an Assembly Use Overlay, consisting of
13 196 properties, but not the CATALINA property (a true and correct copy is attached as Exhibit A
14 §k(1)(2)(3)(4)(5)).

16 48. On March, 2007, at the direction of City officials, the CHURCH applied for an
17 amendment to the Zoning Code and Map for the CATALINA property, changing it from Industrial
18 Park to Industrial Park with Assembly Use Overlay (a true and correct copy is attached as Exhibit
19 A §l).

20 49. In the week prior to the April 12, 2007, Planning Commission meeting, the
21 Planning Staff Report (a true and correct copy is attached as Exhibit A §n(2)) submitted by Ms.
22 POLLART to the Planning Commission recommended denial of the CHURCH's application for
23 an amendment for an Assembly Overlay on the CATALINA property. In making its
24 recommendation the staff listed the following eight (8) criteria based on the CITY'S General Plan
25 and Policies, that it used to produce the already approved Assembly Overlay District covering 196
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1 properties. Said criteria are as follows:

- 2 1) Site is not located along a major commercial corridor (identified as E. 14th Street and Marina
3 Boulevard between San Leandro Boulevard and Merced Street);
4 2) Site is not located within the following General Plan Focus Areas: Downtown, Bayfair, Marina
5 Bld./SOMAR, or West San Leandro (each of these Focus Areas is governed by one or more of
6 the following, which governs future development – special study/guidelines, special overlay
7 district, or location within a redevelopment area);
8 3) Site is not located in a regional-serving retail area (identified as Greenhouse Marketplace,
9 Westgate, Marina Square, and ‘old’ Target site);
10 4) Site is not located inside the one-half-mile study area identified for the Downtown Transit-
11 Oriented Development (TOD) Strategy;
12 5) Site abuts or is within one-quarter mile of an arterial street (as identified in the Circulation
13 Element of the General Plan);
14 6) Site is not located in a Residential Zone (Assembly uses are already conditionally permitted in
15 residential zones, so they would not produce new areas for assembly uses to locate if considered);
16 7) Site is not considered public land, and is not zoned Public Service (PS), Open Space (OS), or
17 Commercial Recreation (CR); property is not owned by an Exempt Public Agency, or
18 leased/owned by a public utility (these areas represent properties and uses that are unlikely to
19 change);
20 8) Overlay Area must allow a contiguous area greater than or equal to two acres. (This figure was
21 derived from research indicating that large assembly uses require a minimum 2-acre site to
22 accommodate bigger building size and to allow for adequate on-site parking.)” (See Exhibit A. §n
23 (2) pp. 4-6).
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50 . On April 9, 2007, Peter MacDonald, an attorney representing the CHURCH, wrote to the Planning Commission, addressing the proposed negative findings of the Planning Staff Report prepared by Ms. POLLART and her recommendation that the Commission deny the CHURCH's application (a true and correct copy is attached as Exhibit A. §n(3)).

51. The staff said that the CHURCH's project site, the CATALINA property, does not meet two of the criteria: 1) Criterion #2, because the property is located within one of the identified General Plan Focus Areas; and 2) Criterion #5, because the property does not abut or is not located within one-quarter mile of an arterial. (See Exhibit A. §n(2) pg. 4 (emphasis in original)).

52. The staff report prepared by Ms. POLLART went on to state that the site failed to meet an additional criterion of public health and safety, which the Planning Commission did not apply to the 196 properties approved for assembly use two months earlier. It said the presence, and the potential future presence, of hazardous materials and activities in the vicinity of the CHURCH's site and the intended assembly use, rendered it inappropriate for rezoning with the Assembly Use Overlay. This was allegedly based on findings that there are eight (8) businesses operating under a Hazardous Materials Business Plan within 500 feet of the CHURCH's site, and an additional 13 businesses between 500 feet and one-quarter mile of the site. (See Exhibit A.

53. On April 12, 2007, the Planning Commission denied the CHURCH's assembly use amendment application. The decision did not require concurrence by the City Council, but appeal to the City Council was permitted. (See Exhibit A §n(6)).

54. On May 7, 2007, the City Council denied the CHURCH's appeal. Defendants TONY SANTOS, SURLENE G. GRANT, DIANA M. SOUZA, JOYSE R. STAROSCIACK,

1 BILL STEPHENS, and JIM PROLA each voted to deny the CHURCH the use of the CATALINA
2 PROPERTY. (See Exhibit A. §o(5)). The minutes reflect that the Board vote was based upon the
3 Council not wanting the CATALINA PROPERTY taken out of the tax base, objections of nearby
4 neighbors and traffic concerns. (See Exhibit A. §o(4), pg. 12). The CHURCH has exhausted its
5 administrative remedies.

6 55. The Defendants' denial of the CHURCH's use of the CATALINA property has
7 caused, and continues to cause, economic damages to the CHURCH. In addition to the \$100,000
8 payment the CHURCH made with the purchase and sales agreement on March 24, 2006, it had to
9 make three additional nonrefundable payments of \$50,000 each, as it waited in vain to get a
10 response from the CITY on its application. Since January 2, 2007, when it completed the
11 purchase, the CHURCH has made monthly mortgage payments of \$33,809.88 each, over \$1,100 a
12 day, without being able to use its property. Additionally, the CHURCH had to rely on an attorney
13 to facilitate the application process with the CITY. Despite the CHURCH's good faith efforts for
14 more than fourteen (14) months to comply with the Defendants' application process, the
15 CHURCH has spent over \$460,000 and still has not been able to use the CATALINA property.
16 Moreover, Defendants Jermanis and Pollart intentionally delayed the review of the CHURCH's
17 application for fourteen months knowing that said delay was (1) substantially burdening the
18 CHURCH's religious exercise and (2) violating the CHURCH's rights under the First and
19 Fourteenth Amendments. Peter MacDonald sent letters to the Planning Commission and the City
20 Council stating that their actions were in violation of RLUIPA (e.g. Exhibit A. §n(3)). Based on
21 these letters they knew that their actions were in violation of federal law. Defendants acted in
22 deliberate contempt of the law.
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Substantial Burden

56. The Defendant's Zoning Ordinance at the time of initial application by the Church in May 2006 substantially burdened the exercise of religious beliefs in that there was no place in the City that a congregation of 1,500 persons or greater could locate. Industrial Districts prohibited religious assembly, but not other kinds of assembly. Residential zones could not accommodate large congregations, and a discretionary use permit process assured that any such CUP application in a residential setting would be denied. As a result, large congregations are precluded from the jurisdiction.

57. The Defendant's Zoning Ordinance as applied after adoption of the AU Overlay District in March 2007, substantially burdens the exercise of religious beliefs in that there is still no place in San Leandro that a congregation of 1,500 person can locate. Denial of the CATALINA site was based upon the presence of businesses with Hazardous Materials Business Plans (HMBP's) within $\frac{1}{4}$ mile. That criteria would apply to prohibit large congregations anywhere within the area rezoned AU Overlay because all of those 196 parcels are within $\frac{1}{4}$ mile of a HMBP (See Exhibit A. §n(2)).

58. The planning process followed by the Defendant deliberately and substantially burdened the exercise of religion in several ways: First, the CITY had the CHURCH make a meaningless application for rezoning to the Light Industrial district (IL) that had certain assembly uses (commercial recreation and entertainment activities). Those uses (commercial recreation and entertainment activities) were already allowed under the existing zoning (Industrial Park – IP). Second, the Defendants then left the CHURCH’s rezoning application un-processed on a shelf for ten months with knowledge that the option to purchase the CATALINA site would expire before a fair hearing or any hearing from the City. Third, the Defendant processed the proposed CHURCH use as three sequential approvals rather than as three parallel approvals (i.e., Creation of Assembly Use Overlay District, re-zone of CATALINA site to Assembly Use Overlay District, and then finally a conditional use permit.) This allowed denial of the proposed re-zoning to AU Overlay

1 based upon theoretical reasons (e.g., distance from arterial) which ignored the actual physical
2 conditions (outstanding traffic access) and unreasonably extended the time for decision.

3 59. The Defendants substantially burden religious uses by conclusively presuming
4 churches are incompatible with industrial uses, in the face of substantial contrary evidence: One,
5 well planned cities who studied the issue, including Pleasanton, Dublin, Livermore, Concord, San
6 Jose and Fremont have found churches compatible with industrial uses. Two, the traffic pattern of
7 church uses is synergistic to industrial traffic, peaking on Sunday, and on week nights, when
8 industrial traffic is minimal or nonexistent. Three, church use does not remove buildings from the
9 industrial base, but uses those buildings in their current form, and returns those buildings to the
10 industrial base when the religious use moves on. Four, the cumulative demand for church space is
11 tiny relative to the supply of industrial space (29,000,000 sq. ft. in San Leandro alone). Five, the
12 presence of businesses subject to Hazardous Materials Business Plans (HMBP's) is ubiquitous and
13 was used as a pretext for denial. The number of persons potentially exposed to a hazardous
14 materials incident in an industrial district is far greater during the weekdays than during Sunday
15 morning church service. (See Letter of Peter MacDonald, Exhibit A. §o(3)).

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17 60. The Defendants' denial of the CHURCH's use of the CATALINA site is a
18 substantial burden on the CHURCH's exercise of its religious beliefs. The core beliefs and values
19 of the CHURCH include: joyous worship of God, local and global evangelism to lead people to
20 faith in Christ, discipleship to instruct believers in life and service, and works of compassion,
21 justice, and human aid. The inability of the CHURCH to use the CATALINA property is a
22 significant restriction on its pursuit of these core tenets, because it limits the number of members
23 and visitors who can attend, participate in activities, and receive spiritual help at its current
24 location on Manor Blvd.

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Substantial Burden **(Worship Services)**

61. One of the core functions of the CHURCH involves meeting to conduct worship services. The CHURCH has three different service meeting times each Sunday to accommodate about 1,700 attendees. At any given time about 500 to 600 vehicles need Sunday service parking. The current location is in a residential neighborhood and only has 154 parking spaces. Attendees park on crowded residential streets. At times, people walk about twenty or more minutes to attend Sunday service. Every Sunday numerous vehicles drive off and do not return because there is no place to park. The CHURCH thus loses the opportunity to minister to dozens of people each Sunday as a result of Defendants' refusal to allow the CHURCH to use the CATALINA property. Indeed, to alleviate the parking at the MANOR property, the CHURCH purchased a neighboring house in the amount of \$565,000 in May of 2006 to obtain a mere 10 additional parking spaces. In other words the CHURCH paid \$56,500 per parking space.

62. It is ICFG's and the CHURCH's theological belief that a local congregation is more than a legal entity that provides religious activities. A church congregation is an entity which is comprised of people who come together to form one body with Jesus Christ as its head. Those who attend congregate to worship God, fellowship with each other, and perform acts of religious service also known as ministry. Those who are turned away each Sunday results in the infliction of suffering in the body. The absence of these dozens of worshippers in the present case is, in a profound theological sense, a substantial burden on the religious practices of gathering together as one body for worship, fellowship and ministry.

63. The dozens of people in the forty or so vehicles turned away every Sunday creates a substantial burden on the religious exercise of the CHURCH in its proselytizing efforts. In addition to engaging in activities which edify the believers who attend the worship services, many

1 who are turned away are visitors to the CHURCH who are not Christians. These have been
2 invited by congregants or come on their own because they are seeking spiritual help. It is a core
3 tenet of the CHURCH to share the Gospel orally and through acts of service. Portions of the
4 worship services and ministry activities on Sunday mornings are calculated to evangelize visitors
5 who are not Christians. The denial of the use of the CATALINA property by the Defendants thus
6 substantially burdens the CHURCH's ability to make converts.
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8 64. The new location has 188 parking spaces. Additionally, the new location is zoned
9 commercial, there is plenty of open street parking, and the CHURH has negotiated with
10 surrounding businesses to use their lots for weekend parking which would add 200 to 300 spaces.
11 If the CHURCH could use the new location then parking would not be a problem. Worship
12 services would be open to all attendees, not just attendees willing and able to walk twenty minutes
13 or show up an hour early to obtain close parking.
14

15 65. Moreover, by not allowing the CHURCH to use their newly acquired property the
16 Defendants are substantially burdening the CHURCH's ability to conduct weekly religious
17 services for their congregation. For example, some of the CHURCH's members are disabled,
18 have small children, or are not able to walk twenty plus minutes to attend Sunday services.
19 Furthermore, some vehicles are not able to find any parking. These attendees are completely
20 denied access to the CHURCH based on limited parking. Hence, by not allowing use of the
21 CATALINA site the Defendants are substantially burdening religious services conducted by the
22 CHURCH.
23

24 66. Parking and a general facility space shortage has caused another impediment on the
25 CHURCH's service. The CHURCH's current location has an occupancy of approximately 650
26 people in the sanctuary, while the new facility can accommodate about 1,100 people in the
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1 sanctuary. The CATALINA property can seat 1,100 in the sanctuary and an additional 500 in
2 other activities (e.g., children and youth) per service. The Defendants are substantially burdening
3 the CHURCH's ability to provide fellowship with each other, perform acts of religious service,
4 and worship God, by denying access to a new facility that can accommodate a larger religious
5 service.

67. The CHURCH's Sunday service is hampered by parking and facility space
7 limitations. Being able to use the new facility is vital to the CHURCH's religious service. The
8 Defendants' denial of access is taking critical space needed to provide a service adequate for the
9 CHURCH's size. The CHURCH's worship services have been, and continue to be, substantially
10 burdened by the Defendants' denial of access to their new facility.
11

Substantial Burden **(Faith Fellowship Ministries)**

14 68. Performing acts of service, generally known as ministry, is a fundamental tenet of
15 ICFG and the CHURCH. Ministries are for both proselytizing and discipleship, e.g., educational.
16 Parking and facility space limitations also encumber the CHURCH's ministries. The CHURCH
17 organizes a number of different ministries for their members. Three specific ministries that have
18 been, and continue to be, substantially burdened by limited parking and facility space, i.e., (1)
19 FaithKidz Ministry, (2) Youth Ministries, and (3) Faith Fellowship Women's Ministry. To attend
20 these ministries members of the CHURCH have to find parking in a packed residential area and
21 find room in a class that is inevitably full.

23 69. The FaithKidz Ministry encompasses children from birth through fifth grades.
24
25 Health and safety considerations, such as (1) limited child to adult ratio, (2) physical size of the
26 rooms, (3) number of rooms, and (4) the number of children allowed in each classroom, limit the
27 ability to minister to the children at the present location. Each Sunday, classrooms reach

1 maximum capacity. When classrooms reach capacity they are closed. In denying the CHURCH's
2 use of their new facility the Defendants caused, and continue to cause, said space encumbrance.
3 The inability to use the CATALINA PROPERTY creates a substantial burden on the CHURCH
4 because children who want to participate in the activities and the parents who want their children
5 to attend the ministry are of necessity turned away. The new larger facility will allow the
6 CHURCH to extend ministry opportunities to all children who want to attend eliminating this
7 substantial burden.

8 70. Another space issue relative to the FaithKidz Ministry is the necessity of having
9 three separate services creating three FaithKidz Ministry sessions. Scattered ministry services
10 makes developing interpersonal relationships with other children difficult, confuses parent
11 volunteers and supervisors who have no ability to meet all parents and all children, further divides
12 the congregation, and creates difficulties in staffing the classrooms.

13 71. Parking and facility space combine to create a problem for parents who want their
14 children to attend the FaithKidz Ministry. For example, a mother was late to church because she
15 had to walk five blocks with her three children (ages three, one, and five) to attend. When she
16 tried to drop off her five year old, the class had reached maximum capacity and was closed. These
17 two problems combined to make attending the FaithKidz Ministry impossible for her five year old
18 child. The Defendants are causing the space problem by not allowing the use of the new facility that
19 has more parking spaces, is at least significantly larger, and is not located in a crowded residential
20 area. As demonstrated, not being able to park nor find space in classrooms significantly constricts
21 the religious exercise of FaithKidz Ministry and the CHURCH as a whole.

22 72. Secondly, the Discipleship Youth Ministry has been burdened by parking and
23 facility space limitations as well. The Defendants' decision to not allow use of the new facility
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1 has caused these space restrictions. The current facility's youth building has a maximum capacity
2 of 250 people not including equipment needed to operate the Youth Ministry. The CHURCH has
3 been forced to split the junior and senior high students into two nights because of space
4 limitations. The Defendants' decision to not allow use of the new facility significantly inhibits the
5 Youth Ministry's ability to provide fellowship between the Disciple Youth Ministry's junior high
6 and senior high school students.
7

8 73. When a parent or visitor arrives at the CHURCH finding no parking for blocks they
9 are discouraged, especially if there is a disability. Students are encouraged to invite their parents
10 to CHURCH. Because of the congestion, some parents will not attend the CHURCH. This makes
11 many students not attend due to parking. The CHURCH would like to allow all students to attend
12 the discipleship ministry. Moreover, the CHURCH has a vision for their after school discipleship
13 programs, a learning center with computers, on site tutoring, and youth events and conferences.
14 Without extra space the CHURCH will continue to not be able to execute their discipleship
15 activities. The CATALINA property will triple the discipleship program's facility size and add
16 needed parking for discipleship attendees and their parents. The Defendants have substantially
17 burdened the discipleship program by denying access to the new facility.
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19 74. Finally, the Faith Fellowship Women's Ministry has been, and continues to be,
20 substantially burdened by not being able to use the CATALINA site. Women comprise sixty
21 percent of the congregation. Faith Fellowship provides Bible studies, retreats, seminars, weight
22 loss classes, new mother's classes, outreach programs, and biblical instruction. Women from
23 outside San Leandro attend classes. It is crucial for the Women's Ministry to secure more space to
24 accommodate the growing number of people who want to be involved in the ministry's activities.
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1 Not being able to use the larger facility owned by the CHURCH is a substantial burden on its
2 religious exercise, which inhibits the growth and activities of the Women's Ministry.

3 75. Only those willing to arrive early to park on site or within a reasonable walking
4 distance, or those willing to park up to five blocks away on residential neighborhood streets and
5 spend twenty or more minutes walking to the facilities can currently attend the CHURCH's
6 ministry activities. After arriving those who get there too late cannot attend because of lack of
7 facility space. The CHURCH needs to use the new facility. This is significantly more than a mere
8 inconvenience. In stopping the use of the new facility the Defendants are substantially burdening
9 the CHURCH's ministries.
10

Substantial Burden **(Charitable Services)**

13 76. Performing acts of charitable service for the less fortunate is a fundamental tenet of
14 ICFG and the CHURCH. It is ICFG and the CHURCH's theological position that when they
15 assist those in need they are doing this to Christ, himself. As such, the CHURCH provides a
16 number of charitable services for the community and their membership. These services are being
17 substantially burdened by the Defendant's decision to deny the use of the CHURCH's
18 CATALINA property. Specifically, the CHURCH's Food Ministry, Single Parent Ministry, and
19 Community Counseling Ministries have been, and continue to be, substantially burdened due to
20 the acts of Defendants. The CHURCH has been hindered in providing charitable services due to
21 the lack of parking, massive residential traffic problem, and shortage of general space. If people
22 cannot attend these ministries, the CHURCH's charitable activities cannot be accomplished.
23 Thus, the CHURCH has been unable to effectively and fully execute their mission of helping the
24 community. As such the denial of the use of the CATALINA site by Defendants has substantially

1 burdened, and continues to substantially burden, the CHURCH's and ICFG's free exercise of
2 religion.

3 77. The Food Ministry provides meals to the public. The CHURCH serves between
4 300 to 400 men, women, and children from needy families each Wednesday night. The MANOR
5 kitchen, smaller than an average home kitchen, is not adequate to prepare meals for the 300 to 400
6 adults and children. Moreover, the kitchen does not have adequate space to accommodate the
7 staff, preparers, and servers necessary for the number of people the CHURCH serves. The kitchen
8 is overcrowded and the number served cannot be expanded to meet community need. However,
9 the new facility at CATALINA will have a kitchen and food preparation area that is five times
10 larger. The CHURCH will be able to install professional restaurant style equipment. More space
11 and commercial equipment will enable the Food Ministry to better meet community needs. As
12 demonstrated, not being able to use the CATALINA site is a substantial burden on the
13 CHURCH's religious exercise by hindering their devout mission of providing a community food
14 ministry to needy individuals and families.

17 78. Another community service being substantially burdened by the Defendants is the
18 Single Parent Ministry. The CHURCH ministers to single parents, so they can effectively
19 function in their families and the community. The CHURCH offers classes on parenting, time
20 management, resume formatting, building self-esteem, and budget planning. Parking and facility
21 space limitations are hindering the growth of the Single Parent Ministry. The CHURCH needs
22 larger rooms, and more rooms, to expand the Single Parent Ministry to serve the community, as
23 per the CHURCH's religious mandates. The new facility will create about three times more
24 facility space and will provide hundreds of more parking spaces. The CHURCH would have
25 room for a food and clothing closet. Single parents could receive free clothing and shoes for their
26 doctor appointments, job interviews, and any other business-dress event. The CHURCH does not
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1 have enough room; the CHURCH has outgrown the old facility. The Defendants are crippling the
2 CHURCH's ability to operate the Single Patent Ministry by not allowing use of the CATALINA
3 property. The Defendants are making the CHURCH effectually crawl on one leg when they could
4 be walking on two; this is a substantial burden on the CHURCH's free exercise of religion.

5 79. Lastly, because of parking and facility space limitations the CHURCH has not
6 been, and continues to not be, able to conduct Community Counseling Ministries in line with
7 community need. The CHURCH conducts marriage and divorce counseling, Biblical instruction
8 counseling, recovery drug and alcohol program counseling, youth counseling, and job counseling.
9 For example, the CHURCH's youth counselors help get teens out of gangs, off of drugs, and back
10 into school. The CHURCH's counseling sessions for the youth are overcrowded. Many people
11 have been turned away due to lack of space and parking. The overall growth of the above
12 programs and the exponential growth of the CHURCH are hampered due to space restrictions.
13 The new building will accommodate well over 1,000 seats and parking for hundreds of vehicles.
14 Additionally, the building will have adequate classrooms and space needed to accomplish the
15 CHURCH's religious counseling mission. By denying access to the CATALINA property the
16 Defendants are substantially burdening the CHURCH's free exercise of religion by not allowing
17 them to fully operate their Community Counseling Ministries.

Compelling Interest

20 80. The Defendants denial of the CHURCH's use of the CATALINA site is not in
21 furtherance of a narrowly tailored compelling governmental interest. The Defendants' stated
22 interests are as follows: (1) preserving the CITY's jobs and tax revenues by excluding the
23 CHURCH from job and tax-producing locations; (2) preventing traffic problems by excluding the
24 CHURCH from areas that do not abut or are not within one-quarter mile of an arterial; (3)
25 opposition from neighboring homeowners association; and, (4) protecting public health and safety
26 by excluding the CHURCH from locations in the vicinity of Hazardous Material Business Plan

1 sites. (See Exhibit A. §o(4), pg 12).

2 81. Promoting positive change in the next 15 years by excluding the CHURCH from
3 General Plan Focus Areas is not a compelling governmental interest, because RLUIPA does not
4 allow a government to use broad and discretionary land use rationales to select the precise
5 property where a religious group can worship. The conclusive exclusion of churches, but not
6 other assembly uses, from any location designated “Study Area” would require a compelling
7 demonstration of incompatibility. That demonstration of incompatibility was not made and could
8 not be made against the Catalina Street location.

9 82. Preventing traffic problems by excluding the CHURCH from areas that do not abut
10 or are not within one-quarter mile of an arterial is not a valid compelling governmental interest.
11 Church related traffic would be greatest on Sundays when most industrial businesses are closed.
12 Most people are home in residential areas on the weekends. Granting use of the CHURCH’s new
13 facility would separate these two crowds placing them in separate areas. Thus, allowing the
14 CHURCH to use the CATALINA site would solve a severe traffic problem at its current
15 residential location without creating a new one.

16 83. Such traffic is not a grave and immediate danger to public health, peace, and
17 welfare. Farallon Drive serves the CATALINA property and is double-width with a two-way
18 turning lane the length of the boulevard. Farallon connects two major arterials (Doolittle and
19 Wicks). Allowing the CHURCH to use their CATALINA site will serve the CITY’s traffic safety
20 interest. Utilizing the CHURCH’s new facility will alleviate current traffic problems in an
21 overcrowded residential area by directing the CHURCH’s traffic to an open commercial site with
22 plenty of driving and parking space.

23
24 84. Protecting public health and safety by excluding the CHURCH from locations in
25 the vicinity of Hazardous Material Business Plan sites is not a compelling governmental interest,
26 because the CITY has permitted other assembly uses in the same location. Moreover, under the
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criteria of being more than two acres in size and more than one-quarter mile from a Hazardous Materials site, none of the 196 properties in the approved Assembly Use Overlay District would qualify for assembly use (a true and correct copy of the Assembly Use Parcel Hazmat Plan is attached as Exhibit B). Additionally, the threat of exposure to hazardous materials does not present a grave and immediate danger to public health, peace, and welfare, because church uses are compatible with light industrial uses. The CITY's building code obligates the user of hazardous materials to provide a system that effectively prohibits migration of hazardous materials off that particular property. Finally, even if the interest were compelling, it is unconstitutionally vague, because an applicant cannot know how many Hazardous Material sites within what distance is acceptable.

85. Preserving the CITY'S jobs and tax revenues by excluding the CHURCH from job and tax-producing locations is not a compelling governmental interest. As a matter of law, preserving jobs and tax revenues is not a compelling governmental interest. RLUIPA does not permit the use of broad and discretionary land use policies to select a precise place where a religious group can worship, which is what the Defendants are doing to the CHURCH. The CHURCH does provide a substantial number of jobs.

Narrow Tailoring

86. Even if the court holds the Defendants' stated health and safety interest is legitimate, their actions are not narrowly tailored. There are other less restrictive alternatives that the Defendants can take to ensure that their interests are met. The Defendants have cited a health and safety concern in permitting the CHURCH to use the CATALINA property near sites with hazardous material plans. However, the Defendants are allowing other commercial assembly uses.

1 mass employment uses, and an assembly overlay district with assembly locations close to sites
2 with hazardous material plans.

3 87. The industrial zoning currently on the CATALINA site permits both commercial
4 recreation and entertainment activities. A church use that gathers people for worship and other
5 activities is very similar to a commercial entertainment facility, such as a multi-screen movie
6 theater. Through its industrial zoning, the CITY serves the stated health interests while allowing
7 commercial recreation and entertainment activities. Despite this, the Defendants apparently assert
8 that there are no other means of serving the health interest for religious assembly at the same time.
9 Defendants' bad faith shows a lack of narrow tailoring.

10 88. About 2,000 employees work in businesses surrounding the church site every
11 weekday (Exhibit A. §n(4)). The hazardous materials are actively used in the manufacturing
12 process on weekdays. ICFG and the CHURCH are informed and believe and thereon allege that
13 the CITY has a plan for the health and safety of people working extremely close to these
14 chemicals. Despite this plan, Defendants fail to allow the CHURCH assembly use to operate
15 under the same plan. The Defendants have failed to articulate a rational basis why religious users
16 should be subject to a different standard than industrial workers.

17 89. Finally, the CITY's newly approved assembly overlay zoning included 196 parcels
18 and skipped the CATALINA property. Most, if not all of those sites, are surrounded by industrial
19 areas with hazardous material plans. There is no difference in having assembly in these areas and
20 having assembly on the CATALINA site. In that the CITY can serve their health and safety
21 interests while allowing assembly (AU) overlay zoning near hazardous waste plans then the CITY
22 should be able to serve their health and safety interests while allowing the CHURCH to assemble
23 on the CATALINA property.

90. More hazardous materials require additional levels of containment, all designed to keep the materials from leaving the site where they are used. Containment plans now in place are keeping hazardous materials from homes located 250 yards away from the CATALINA property that are behind other industrial buildings. Thousands of employees work with and around these materials. Current safety plans are protecting these employees. The safety plans are just one example of a narrowly tailored alternative to support health and safety and could be used to allow religious assembly on the CATALINA site. Instead, Defendants have deliberately refused, and continue to refuse, to provide the same or similar narrowly tailored plan for the CHURCH.

FIRST CAUSE OF ACTION:

Preliminary and Permanent Injunction

(All Defendants)

91. ICFG and CHURCH hereby incorporate paragraphs 1 through 90 of this Complaint as though fully set forth herein.

92. ICFG and CHURCH request that this Court issue a preliminary injunction as follows:

A. In light of the facial equal protection violation of allowing non-religious assembly such as entertainment activities in the IP District, while prohibiting religious assembly, ICFG and CHURCH seek an order from the Court directing the City to immediately process the conditional use permit application of CHURCH for the CATALINA property. City shall confine its basis of review and conditions of approval to considerations that would be applied to an entertainment activity of similar scale (e.g., compatibility of use, not tax base).

B. To the extent that there are religious uses that can be made of the CATALINA property in compliance with adopted health and safety ordinances of the City without major renovation (i.e.,

1 less than 10% of purchase price), ICFG and CHURCH seek an order from the Court directing the
2 City to allow those uses to be conducted during the pendency of this proceeding.

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4 93. The Defendants' denial of the CHURCH's use of the CATALINA site violates its
5 First Amendment rights to freedom of speech, freedom of assembly, and free exercise of religion,
6 its Fourteenth Amendment equal protection rights, and its rights under RLUIPA of 2000. Because
7 the Defendants have substantially impaired the CHURCH's and ICFG's exercise of its beliefs in
8 the commands of Jesus Christ to proclaim and propagate the Gospel, make disciples, and assist the
9 poor, the CHURCH and ICFG have been and continue to be harmed.

10
11 94. Unless the Defendants are enjoined and restrained by the Court from denying the
12 CHURCH's use of the CATALINA property, the CHURCH's First Amendment rights to freedom
13 of speech, freedom of assembly, and freedom of religion, its Fourteenth Amendment equal
14 protection rights, and its rights under RLUIPA of 2000, 42 U.S.C. 2000cc, will continue to be
15 violated. CHURCH has also suffered, and continues to suffer, monetary damages as a result of
16 Defendants' unconstitutional and unlawful actions.

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18 95. All of the acts of the Defendants, the CITY, its officers, agents, servants and
19 employees, as alleged herein, were conducted under the cover and pretense of the statutes,
20 policies, regulations, customs, and usages of the CITY. Unless a preliminary injunction is issued
21 ordering the Defendants to grant to the CHURCH the use of the CATALINA site, the CHURCH
22 will continue to suffer irreparable injury, because it cannot freely exercise its rights, being
23 substantially burdened by the Defendants' actions.

24
25 96. The issuance of a preliminary injunction would not cause substantial harm to
26 others. Indeed, in balancing the harms granting a preliminary injunction weighs heavily in favor
27 of ICFG and the CHURCH.

97. The public interest would be served by the issuance of a preliminary injunction, because the public would be permitted to exercise its First Amendment right to free exercise of religion. Stopping the ICFG, the CHURCH, and the public from practicing their religion, for any amount of time, leads to irreparable harm. Moreover, given the facts of this case and the substantial burden the CITY has put on ICFG and the CHURCH the Plaintiffs are likely to succeed on the merits.

98. Wherefore, ICFG and CHURCH seek relief against the Defendants as hereinafter set forth in the prayer.

SECOND CAUSE OF ACTION:

Violation of Religious Land Use and Institutionalized

Persons Act of 2000 -- “Substantial Burden on Religious Exercise”

(42 U.S.C. § 2000cc (a), et seq.)

(All Defendants)

99. ICFG and CHURCH hereby incorporate paragraphs 1 through 98 of this Complaint as though fully set forth herein.

100. CHURCH alleges that Defendants have in place formal or informal procedures or practices that permit Defendants, and each of them, to make individualized assessments of the proposed religious use for the CATALINA property. The Defendants further makes, and has in place, one or more land use regulations which direct that no property within the jurisdiction of the CITY may be used as a church without the prior issuance of an Assembly Use Permit. The conditions of said regulations and denial of the CHURCH's application for an Assembly Use Permit for the CATALINA property constitute a substantial burden on the religious exercise of the CHURCH and constitute unlawful restrictions on the use of the subject property.

1 101. The Defendants' denial of the CHURCH's use of the CATALINA site imposes a
2 substantial burden on the religious exercise of the CHURCH in violation of RLUIPA of 2000, 42
3 U.S.C. § 2000cc(a) et seq., because the CHURCH and has been, and is, significantly limited in its
4 ability to fully exercise its beliefs in the commands of Jesus Christ to proclaim and propagate the
5 Gospel, make disciples, and assist the poor. Because the CHURCH has outgrown its current
6 facility in terms of building space and parking, members and visitors are hindered in their
7 attendance of worship services in the worship center and of other religious instruction. The
8 CHURCH has found suitable property, the CATALINA site, to solve these problems, but the
9 Defendants will not allow the CHURCH to use the CATALINA property for religious purposes.
10 Further, despite the CHURCH's good faith effort to comply with a lengthy application process and
11 its reasonable reliance on statements by City officials that other entities have been granted
12 Assembly Use Permits, the CHURCH must pay nearly \$35,000 a month for a property that it
13 cannot use.
14

15 102. The Defendants' denial of the CHURCH's use of the CATALINA site is not in
16 furtherance of a narrowly tailored compelling governmental interest of preserving property for one
17 of its General Plan Focus Areas. RLUIPA does not allow a government to use broad and
18 discretionary land use rationales to select the precise property where a religious group can
19 worship.
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21 103. The Defendants' denial of the CHURCH's use of the CATALINA property,
22 because it does not abut or is not within one-quarter mile of an arterial, is not in furtherance of a
23 narrowly tailored compelling governmental interest. Church related traffic would be greatest on
24 Sundays when most businesses are closed. In addition, such traffic is not a grave and immediate
25 danger to public health, peace, and welfare.
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1 104. The Defendants' denial of the CHURCH's use of the CATALINA site because it is
2 in the vicinity of businesses which operate under a Hazardous Materials Business Plan is not in
3 furtherance of a narrowly tailored compelling governmental interest in public health and safety.
4 The Defendants have permitted other Assembly Uses in the same location. The threat of exposure
5 to hazardous materials does not present a grave and immediate danger to public health, peace, and
6 welfare.

7 105. The Defendants' denial of the CHURCH's use of the CATALINA site because it is
8 in the vicinity of businesses which operate under a Hazardous Materials Business Plan is not the
9 least restrictive means of furthering its alleged compelling governmental interests in public health
10 and safety. The Defendants have permitted other assembly uses in the same location. The
11 Defendants could follow the same practices as in these situations to further their interests and
12 allow an Assembly Use Permit.

14 106. Unless Defendants are enjoined and restrained by the Court from denying the
15 CHURCH's use of the CATALINA PROPERTY, the CHURCH will continue to be substantially
16 burdened in its religious exercise through the imposition of a land use regulation. The CHURCH
17 has also suffered, and continues to suffer, monetary damages as a result of Defendants' unlawful
18 actions.

20 107. Wherefore, ICFG and CHURCH seek any and all "appropriate relief" as per 42
21 U.S.C. 2000cc-2(a) and as otherwise provided by law against the Defendants as hereinafter set
22 forth in the prayer.

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THIRD CAUSE OF ACTION:

Violation of Religious Land Use and Institutionalized

Persons Act of 2000 -- “Treatment of Religious Assembly on Less Than

Equal Terms with a Nonreligious Assembly”

(All Defendants)

108. ICFG and CHURCH hereby incorporate paragraphs 1 through 107 of this Complaint as though fully set forth herein.

109. The Defendants' denial of the CHURCH's use of the CATALINA site treats the CHURCH on a less than equal basis with a nonreligious assembly in violation of RLUIPA of 2000, 42 U.S.C. § 2000cc(b)(1), et seq., because the CITY has already approved assembly use amendments for commercial recreation and entertainment businesses without subjecting them to all of the same criteria that has been required of the CHURCH.

110. Unless Defendants are enjoined and restrained by the Court from denying the
CHURCH's use of the CATALINA property, the CHURCH's right to be treated on equal terms
with a nonreligious assembly will continue to be infringed in violation of RLUIPA of 2000, 42
U.S.C. 2000cc(b)(1). The Defendants have imposed a different standard upon the CHURCH
because the Defendants are allowing other similarly situated commercial assembly usages while
not allowing the CHURCH's religious assembly. The Defendants' decision to not allow the
CHURCH's use of their new facility treats the CHURCH unequally when compared to standards
and criteria applied to other non-religious commercial entities similarly situated. ICFG and
CHURCH have also suffered, and continue to suffer, monetary damages as a result of Defendants'
unlawful actions.

1 111. Wherefore, ICFG and CHURCH seek any and all “appropriate relief” as per 42
2 U.S.C. 2000cc-2(a) and as otherwise provided by law against the Defendants as hereinafter set
3 forth in the prayer.

FOURTH CAUSE OF ACTION:

Violation of Religious Land Use and Institutionalized

Persons Act of 2000 -- “Total Exclusion from Jurisdiction or

Unreasonable Limits on Religious Assemblies within Jurisdiction”

(42 U.S.C. 2000cc(b)(3))

(All Defendants)

11 112. ICFG and CHURCH hereby incorporate paragraphs 1 through 111 of this
12 Complaint as though fully set forth herein.

13. The Defendants' criteria used to deny the CHURCH's use of the CATALINA site
is a violation of the RLUIPA of 2000 (42 U.S.C. § 2000cc(b)(3)) prohibition against land use
regulations that totally exclude religious assemblies from a jurisdiction, or unreasonably limit
them within a jurisdiction, because there are virtually no properties in the recently created
Assembly Overlay District, or in any other district outside of residential zones, that are not within
500 feet of a business operating under a Hazardous Materials Business Plan.

114. The Defendants' criteria used to deny the CHURCH's use of the CATALINA
PROPERTY is a violation of RLUIPA, which prohibit land use regulations that totally exclude
religious assemblies from a jurisdiction, or unreasonably limit them within a jurisdiction (42
U.S.C. § 2000cc(b)(3)). The reason is that there are no properties in the recently created
Assembly Use Overlay District of over two acres in size, as required for a religious assembly use
by an assembly of the size like the CHURCH, and not within one-quarter mile of a business

operating under a Hazardous Materials Business Plan.

115. Unless Defendants are enjoined and restrained by the Court from denying the
CHURCH's use of the CATALINA site, the CHURCH's right under RLUIPA not to have
imposed on it land use regulations that totally exclude religious assemblies from a jurisdiction, or
unreasonably limit them within a jurisdiction, will continue to be violated. The CHURCH has
also suffered, and continues to suffer, monetary damages as a result of the Defendants' unlawful
actions.

116. Wherefore, ICFG and CHURCH seek any and all “appropriate relief” as per 42 U.S.C. 2000cc-2(a) and as otherwise provided by law against the Defendants as hereinafter set forth in the prayer.

FIFTH CAUSE OF ACTION:

Deprivation of Rights under United States Constitution:

Free Exercise of Religion: First and Fourteenth Amendments

(42 U.S.C. § 1983)

(Jermanis and Pollart as individuals)

117. ICFG and CHURCH hereby incorporate paragraphs 1 through 116 of this Complaint as though fully set forth herein.

118. Defendants, Mr. JERMANIS and Ms. POLLART, have deprived, and continue to deprive, the CHURCH of its right to the free exercise of religion, as secured by the First Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment. The Defendants have discriminated against the CHURCH by substantially burdening its ability to freely exercise its religious faith through the CITY'S assembly use application regulation. Both on its face and as applied, the burden is not neutral or of general

1 application and is not narrowly tailored. Mr. JERMANIS and Ms. POLLART acted in a manner
2 ultra-vires to the law and under color of state law. Mr. JERMANIS and Ms. POLLART acted
3 intentionally and knew, or should have known, that their actions violated rights secured under the
4 First and Fourteenth Amendments and federal law.

5 119. Wherefore, ICFG and CHURCH seek relief against the Defendants as hereinafter
6 set forth in the prayer.

SIXTH CAUSE OF ACTION:

Deprivation of Rights under United States Constitution:

Freedom of Speech: First and Fourteenth Amendments

(42 U.S.C. § 1983)

(Jermanis and Pollart as individuals)

13 120. ICFG and CHURCH hereby incorporate paragraphs 1 through 119 of this
14
15 Complaint as though fully set forth herein.

16 121. Defendants, Mr. JERMANIS and Ms. POLLART, have deprived, and continue to
17 deprive, the CHURCH of its right to free speech, as secured by the First Amendment to the United
18 States Constitution and made applicable to the States by the Fourteenth Amendment. Defendants
19 have discriminated against the Church by restricting its speech rights and the congregants'
20 corresponding right to hear. The crowded facilities, inadequate parking, and traffic congestion at
21 the CHURCH's present location are hindering its members and visitors from entering the
22 CHURCH's facilities and exercising their speech rights. If the Defendants had permitted the
23 CHURCH to use the CATALINA site, the CHURCH and its congregants could have been
24 exercising their free speech rights. Both Mr. JERMANIS and Ms. POLLART acted in a manner
25 ultra-vires to the law and under color of state law. Mr. JERMANIS and Ms. POLLART acted

1 intentionally and knew, or should have known, that their actions violated rights secured under the
 2 First and Fourteenth Amendments and federal law.

3 122. Wherefore, ICFG and CHURCH seek relief against the Defendants as hereinafter
 4 set forth in the prayer.

5 **SEVENTH CAUSE OF ACTION:**

6 **Deprivation of Rights under United States Constitution:**

7 **Freedom of Assembly: First and Fourteenth Amendments**

8 (42 U.S.C. § 1983)

9 **(Jermanis and Pollart as individuals)**

10 123. ICFG and CHURCH hereby incorporate paragraphs 1 through 122 of this
 11 Complaint as though fully set forth herein.

12 124. Defendants, Mr. JERMANIS and Ms. POLLART, have deprived, and continue to
 13 deprive, the CHURCH of its right to freely assemble for the purpose of religious worship and
 14 expression, as secured by the First Amendment to the United States Constitution and made
 15 applicable to the States by the Fourteenth Amendment. Both Mr. JERMANIS and Ms. POLLART
 16 have acted in a manner ultra-vires to the law and under color of state law. Their actions were
 17 intentionally calculated to restrict the assembly rights of CHURCH and its members. Mr.
 18 JERMANIS and Ms. POLLART acted intentionally and knew, or should have known, that their
 19 actions violated rights secured under the First and Fourteenth Amendments and federal law.

20 125. Wherefore, ICFG and CHURCH seek relief against the Defendants as hereinafter
 21 set forth in the prayer.

EIGHTH CAUSE OF ACTION:

Deprivation of Rights under United States Constitution:

Freedom of Association: First and Fourteenth Amendments

(42 U.S.C. § 1983)

(Jermanis and Pollart as individuals)

126. ICFG and CHURCH hereby incorporate paragraphs 1 through 125 of this Complaint as though fully set forth herein.

127. Defendants, Mr. JERMANIS and Ms. POLLART, have deprived, and continue to deprive, the CHURCH of its right to freely associate for the purpose of religious worship and expression, as secured by the First Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment. Mr. JERMANIS and Ms. POLLART acted in a manner ultra-vires to the law and under color of state law. Their actions were intentionally calculated to restrict the associative rights of CHURCH and its members. Mr. JERMANIS and Ms. POLLART acted intentionally and knew, or should have known, that their actions violated rights secured under the First and Fourteenth Amendments and federal law.

128. Wherefore, ICFG and CHURCH seek relief against the Defendants as hereinafter set forth in the prayer for relief.

NINTH CAUSE OF ACTION:

Deprivation of Rights under United States Constitution:

Equal Protection: Fourteenth Amendment

(42 U.S.C. § 1983)

(Jermanis and Pollart as individuals)

1 129. ICFG and CHURCH hereby incorporate paragraphs 1 through 128 of this
2 Complaint as though fully set forth herein.

3 130. Defendants, Mr. JERMANIS and Ms. POLLART, have deprived and continue to
4 deprive the CHURCH of its right to equal protection of the laws, as secured by the Fourteenth
5 Amendment to the United States Constitution, by discriminating against the CHURCH in their
6 application of the laws, regulations, and plans of the State of California and those of the CITY, in
7 a manner that was on less than equal terms with nonreligious assemblies. Mr. JERMANIS and
8 Ms. POLLART acted in a manner ultra-vires to the law and under color of state law. Their
9 actions were intentionally calculated to deny equal protection under the law of the CHURCH. Mr.
10 JERMANIS and Ms. POLLART acted intentionally and knew, or should have known, that their
11 actions violated rights secured under the First and Fourteenth Amendments and federal law.
12

13 131. Wherefore, ICFG and CHURCH seek relief against the Defendants as hereinafter
14 set forth in the prayer.

TENTH CAUSE OF ACTION:

Deprivation of Rights under United States Constitution:

Due Process: Fourteenth Amendment

(42 U.S.C. § 1983)

(Jermanis and Pollart as individuals)

22 132. ICFG and CHURCH hereby incorporate paragraphs 1 through 131 of this
23 Complaint as though fully set forth herein.

24 133. Defendants, Mr. JERMANIS and Ms. POLLART, have deliberately deprived and
25 continue to deprive the CHURCH of due process of law, as secured by the Fourteenth Amendment
26 to the United States Constitution, by 1) denying the CHURCH the use of the CATALINA site for

worship, religious education, and social services, based on the CITY'S General Plan, Zoning
 1 Code, Zoning Map, and Assembly Use Overly District criteria that are in part vague and indefinite
 2 and constitute a standard of review different in substance and form from that applied to other
 3 applicants, including distinct public health and safety criteria, and 2) intentionally prolonging the
 4 Assembly Use Permit application process in order to obstruct, delay, and prevent the CHURCH's
 5 use of the CATALINA property. Mr. JERMANIS and Ms. POLLART acted in a manner ultra-
 6 vires to the law and under color of state law. Their actions were intentionally calculated to deny
 7 the due process rights of CHURCH. Mr. JERMANIS and Ms. POLLART acted intentionally and
 8 knew, or should have known, that their actions violated rights secured under the First and
 9 Fourteenth Amendments and federal law.

12 134. Wherefore, ICFG and CHURCH seek relief against the Defendants as hereinafter
 13 set forth in the prayer.
 14

ELEVENTH CAUSE OF ACTION:

Deprivation of Rights under Federal Law:

Religious Exercise: RLUIPA of 2000

(42 U.S.C. § 1983)

(Jermanis and Pollart)

20 135. ICFG and CHURCH hereby incorporate paragraphs 1 through 134 of this
 21 Complaint as though fully set forth herein.
 22

23 136. Defendants, Mr. JERMANIS and Ms. POLLART, have deliberately deprived and
 24 continue to deprive the CHURCH of its rights of religious exercise, as secured by the Religious
 25 Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc., et seq., by the
 26 imposition of its assembly use regulations in a manner that: 1) imposes a substantial burden on the
 27

CHURCH's religious exercise, by denial of the CHURCH's use of the CATALINA property, without any material fact in the record showing the denial to be in furtherance of a narrowly tailored compelling governmental interest, and by the least restrictive means of furthering that alleged compelling governmental interest, 2) treats the CHURCH on less than equal terms with nonreligious assemblies, and 3) totally excludes religious assemblies from its jurisdictions, or unreasonably limits religious assemblies within its jurisdiction. Mr. JERMANIS and Ms. POLLART acted in a manner ultra-vires to the law and under color of state law. Their actions were intentionally calculated to substantially burden the exercise of religion of the CHURCH and its members. Mr. JERMANIS and Ms. POLLART acted intentionally and knew, or should have known, that their actions violated rights secured under the First and Fourteenth Amendments and federal law.

137. Wherefore, ICFG and CHURCH seek relief against the Defendants as hereinafter set forth in the prayer.

PRAAYER FOR RELIEF

WHEREFORE, ICFG and CHURCH respectfully pray that the Court grant:

1. A preliminary injunction allowing the CHURCH to worship and exercise of its religious freedom in the CATATLINA property during the pendency of this case;

2. An order permanently enjoining Defendants, and each of them, from denying the CHURCH use of the CATALINA site;

3. An order declaring the respective rights and duties of the parties relative to the CATALINA property;

4. An order declaring that the criteria used by the Defendants to deny the CHURCH's use of the CATALINA site, to wit, (1) preserving the CITY's jobs and tax revenues by excluding

1 the CHURCH from job and tax-producing locations; (2) preventing traffic problems by excluding
2 the CHURCH from areas that do not abut or are not within one-quarter mile of an arterial; (3)
3 opposition from neighboring homeowners association; and, (4) protecting public health and safety
4 by excluding the CHURCH from locations in the vicinity of Hazardous Material Business Plan
5 sites, as applied, void, invalid, and unconstitutional, in that it violates the Free Exercise, Free
6 Speech, Free Assembly, Free Association, Equal Protection, and Due Process rights under the
7 United States Constitution and the Religious Exercise protections of the Religious Land Use and
8 Institutionalized Persons Act of 2000;

10 5. An order declaring that the criteria used by the Defendants to deny the CHURCH's
11 use of the CATALINA PROPERTY, to wit, (1) preserving the CITY's jobs and tax revenues by
12 excluding the CHURCH from job and tax-producing locations; (2) preventing traffic problems by
13 excluding the CHURCH from areas that do not abut or are not within one-quarter mile of an
14 arterial; (3) opposition from neighboring homeowners association; and, (4) protecting public
15 health and safety by excluding the CHURCH from locations in the vicinity of Hazardous Material
16 Business Plan sites, on their face, void, invalid, and unconstitutional, in that it violates the Free
17 Exercise, Free Speech, Free Assembly, Free Association, Equal Protection, and Due Process rights
18 under the United States Constitution and the Religious Exercise protections of the Religious Land
19 Use and Institutionalized Persons Act of 2000;

21 6. An order declaring one of the criteria used by the Defendants to deny the
22 CHURCH's use of the CATALINA property, to wit, protecting public health and safety by
23 excluding the CHURCH from locations in the vicinity of Hazardous Material Business Plan sites,
24 void, valid, and unconstitutional on its face, in that it is so vague, in that a reasonable person of
25 average intelligence cannot understand it and conform his or her conduct thereto.

7. Nominal damages;

8. Economic damages;

9. Reasonable attorneys' fees pursuant to 42 U.S.C. § 1988(b) and other applicable statutes;

10. Costs incurred as a result of Defendants' actions and this lawsuit;

11. In light of unreasonable delays in processing CHURCH'S land use application,

City shall establish a restricted fund and begin reserving for potential damages in an amount equal to CHURCH'S monthly mortgage interest on the CATALINA PROPERTY, (not including principle), accruing monthly from March 19, 2007 (the reasonable conservative date by which final approval should have been granted, if appropriate) until a judicial determination of this case becomes final; and

12. Other and further relief as the Court deems just and proper.

Dated: July 11, 2007

Kevin T. Snider
Counsel of Record
Matthew B. McReynolds
Peter MacDonald
Attorneys for the Plaintiff
ICFG
Faith Fellowship Foursquare Church

REQUEST FOR JURY TRIAL

Plaintiff hereby respectfully requests a jury trial.

Dated: July 11, 2007

Kevin T. Snider
Counsel of Record
Matthew B. McReynolds
Peter MacDonald
Attorneys for the Plaintiff
ICFG
Faith Fellowship Foursquare Church

VERIFICATION

I, Gary Mortara am the Senior Pastor of Faith Fellowship Church which is the real party in interest in the above-captioned matter. I have read the VERIFIED COMPLAINT FOR VIOLATION OF CONSTITUTIONAL RIGHTS AND THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT and am familiar with same. The contents are true and accurate and known to me by personal knowledge except for those matters asserted on information and belief. As to those matters, I believe them to be true.

I declare under penalty of perjury, under the laws of the United States and the State of California, that the foregoing is true and correct. Executed this 12th day of July, 2007, in the County of Alameda, City of San Leandro, State of California.

GARY MORTARA

VERIFICATION

I, JAMES LEE, am the Facilities Manager of Faith Fellowship Church which is the real party in interest in the above-captioned matter. I have read the COMPLAINT FOR VIOLATION OF CONSTITUTIONAL RIGHTS AND THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT and am familiar with same. The contents are true and accurate and known to me by personal knowledge except for those matters asserted on information and belief. As to those matters, I believe them to be true.

I declare under penalty of perjury, under the laws of the United States and the State of California, that the foregoing is true and correct. Executed this 12th day of June, 2007, in the County of Alameda, City of San Leandro, State of California.

JAMES LEE